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TAGS: [PGOV](#) [PHUM](#) [KDEM](#) [VE](#)
SUBJECT: COURT BATTLE CLOUDS CNE SIGNATURE TALKS

REF: A. CARACAS 1169

[B](#). CARACAS 1133
[C](#). CARACAS 923
[D](#). CARACAS 908

Classified By: Abelardo A. Arias, Political Counselor, for Reasons 1.4(b) and (d).

Summary

[1](#)1. (C) Two chambers of the Venezuelan Supreme Court (TSJ) issued conflicting decisions on April 12 regarding the recall referendum against President Hugo Chavez. The Electoral Chamber issued its definitive decision nullifying the National Electoral Council's (CNE) disqualification of 876,000 signatures in support of the recall for similar handwriting ("planillas planas"). The Constitutional Chamber issued on the same day its decision that it is the only chamber competent to rule on the referendum. Opposition negotiators had asked the Court to delay the decisions because of possible interference with the talks at the CNE and are close to an agreement on the process for appealing individual signatures ("reparos"). CNE Director Jorge Rodriguez said April 6 that if an agreement can be reached by April 17, the appeals process could take place as early as May 13. While deadlines never have much bearing in Venezuelan politics, we believe that if talks collapse this time, the chances of a referendum by August 19 are greatly reduced. End summary.

Supreme Court Zig Zags

[1](#)2. (C) On April 12, the Electoral Chamber issued renewed its order to the National Electoral Council (CNE) to validate 876,000 signatures collected in support of the presidential recall referendum that the CNE had originally sent to the appeals process due to similar handwriting on the signature forms ("planillas planas"). The Electoral Chamber gave the CNE five days to comply with the decision. Just hours before, the Constitutional Chamber of the Supreme Court (TSJ) affirmed its earlier declaration that it is the only chamber competent to hear cases related to the CNE because it relates to the constitutional question of the roles of separation of powers. Constitutional expert Tulio Alvarez told poloff April 13 the stage is now set for the two chambers to square off in the Plenary Chamber, which consists of all justices from the TSJ's five chambers. Tulio Alvarez said it could take two months for the Plenary Chamber to make a decision.

[1](#)3. (C) The CNE released a statement on April 13 saying that the Constitutional Chamber's decision effectively nullifies that of the Electoral Chamber, which the CNE accused of attempting to "co-administrate" electoral matters with the CNE. Speaking to reporters, CNE Counsel Andres Brito rejected the Electoral Chamber's authority, saying the CNE is an independent branch of government. Movement to Socialism (MAS) President and opposition negotiator Felipe Mujica told poloff April 13 that the opposition had asked the TSJ chambers last week not to issue their decisions because an agreement was forthcoming. Mujica blamed TSJ President Ivan Rincon for ignoring the opposition and moving ahead with the Constitutional Chamber's decision. Mujica noted Primero Justicia President Julio Borges' comment that it is now clear the judicial path will remain blocked and that the opposition now had to finish the negotiations with the CNE.

CNE Talks Reach Make-or-Break Point

[1](#)4. (C) National Electoral Council (CNE) Director Jorge Rodriguez announced on April 6 that if the CNE and the opposition can agree by April 17 on an appeals process ("reparos") for the signatures collected in support of a recall referendum against President Hugo Chavez, it can be

held as early as May 13. Chief OAS observer Marcelo Alvarez told poloff April 12 that it would be impossible to hold the presidential referendum before August 19 if an agreement is not reached in the next few days. Rodriguez stated publicly that if an agreement is forthcoming, the presidential referendum might be held by August 8. Alvarez warned, however, that "nothing is fixed" and that Rodriguez's comments were negotiating tactics.

15. (C) Mujica said the negotiations are like trying to "disarm a time bomb" due to the risk for the opposition of going to the appeals process. Negotiating the appeals process amidst so many uncertainties, he said, is like not knowing whether to cut the "blue wire or red wire on a bomb." He predicted that the opposition would go through a wave of convulsions as each opposition group expresses their opinion once a decision is reached. This would be the greatest test of opposition unity, he said. Mujica predicted that only Proyecto Venezuela (Henrique Salas Romer) would not participate in the reparos, if the final agreement is workable.

GOV Negotiating Position

16. (C) Alvarez said that CNE Director Jorge Rodriguez is under intense pressure from the pro-GOV campaign committee, the "Comando Ayacucho," not to yield to the opposition. Comando Ayacucho members routinely remark to the press their dissatisfaction with the CNE's alleged conciliatory attitude. Mujica dismissed this as pure theater, suggesting that Rodriguez is taking orders directly from Vice President Jose Vicente Rangel. Mujica said the GOV's tactic is to reach an appeals process that is contentious enough to divide the opposition over whether to participate. Mujica predicted the GOV would underestimate the opposition's cohesion and therefore give more concessions than they ought.

Devil in the Details

17. (C) Alvarez criticized opposition negotiators for soft-pedaling on the numbers of signatures eligible for appeals. Mujica said the opposition hoped the CNE would declare 1.96 million signatures valid and that 1.3 million would go to the appeals process (leaving some 500,000 signatures to be validated by appeal to reach the 2.4 million threshold). Mujica also said the CNE had agreed to 2,700 centers for "five days," as stated in the rules, though the first and last days would be devoted to set-up and dismantling the centers. The sticking point is the number of tables at each center: some centers would require only one while others more than five. The opposition would like to have a formula based on the number of signatures to be appealed, but the CNE has in the past imposed a fixed number.

18. (C) Alfredo Lazarrabal, of the NGO Sumate, highlighted how the numbers are being manipulated by electoral districts. When the CNE gave the opposition a revised database of the signatures, some 250,000 signatures had been shifted out of opposition strongholds in Caracas to remote states where Chavez has more support. Lazarrabal said there is no logical reason for the shift other than a concerted effort by the GOV to increase the challenge of the appeals process. Opposition negotiator Enrique Naime told PolCouns April 2 that he had brought the apparent shift in where rejected signatures occurred to CNE Director Rodriguez. The review of the numbers, he said, indicated that the CNE had upped the number of invalid signatures by more than 200 percent in some states while decreasing them by nearly 50 percent in the capital. Naime later noted that the alleged manipulation of the numbers, more problematically, was being done at the municipal level.

Comment

19. (C) These are not win-win negotiations. Each side is hoping the other will miscalculate what it will take to win or lose the appeals process. The opposition is convinced this will be their final attempt to salvage the presidential referendum. While deadlines never have much bearing in Venezuelan politics, we believe that if talks collapse this time, the chances of a referendum by August 19 are greatly reduced. If an agreement is struck, we will need to continue pressing the various opposition groups to keep working toward the referendum.

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